

UNITED STATES CIVIL SERVICE COMMISSION

FEDERAL PERSONNEL MANUAL SYSTEM

LETTER

FPM LETTER NO. 550-16

Washington, D.C. 20415
August 5, 1966

SUBJECT: Amendments to Premium Pay Provisions of Federal Employees Pay Act of 1945, as Amended

Heads of Departments and Independent Establishments:

The Federal Employees Salary Act of 1966 amended the Federal Employees Pay Act of 1945, as amended, (5 U.S.C. 901, et seq.) in several significant respects by providing for:

1. Overtime pay for work in excess of 8 hours in a day except for certain employees with a "first-forty-hour" tour of duty;
2. Maximum rate of overtime pay at rate 1 of GS-10 instead of rate 1 of GS-9; and
3. Premium pay for Sunday work.

The Commission has amended its regulations under Part 550, Pay Administration (General), to reflect these changes. The revised regulations are attached and are effective on the first day of the first pay period after July 18, 1966.

Pay for Work in Excess of 8 Hours in a Day

The regulations provide that overtime pay properly ordered or approved is payable for work in excess of 40 hours in an administrative workweek or 8 hours in a day, whichever is the greater number of overtime hours. This follows the principle established by the Comptroller General in a decision that concerned overtime pay for work in excess of 8 hours a day for wage board employees (see 42 Comp. Gen. 329). For example, an employee has a basic workweek consisting of four 10-hour days. He is entitled to 32 hours at straight-time rates and 8 hours at overtime rates. One week he works 2 hours in addition on each of three days, thus working three 12-hour days and one 10-hour day. In such a case, the employee would be entitled to 32 hours at straight-time rates and 14 hours at overtime rates.

If this employee with a basic workweek of four 10-hour days is on leave for the last 2 hours of a day, he is entitled only to straight-time rate

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since he did not perform any overtime work in excess of 8 hours a day. On the other hand, if such an employee were on annual leave for the first 8 hours and worked the last two hours of a day, he would be entitled to overtime pay for the last two hours. (Note: Annual and sick leave would continue to be charged on the basis of the employee's basic workweek even though some of those hours are compensated at overtime rates because they are in excess of 8 hours a day.)

The provisions for payment of overtime for work in excess of 8 hours a day do not apply to the following employees for whom the first 40 hours of duty in an administrative workweek is the basic workweek:

1. Employees at any grade level engaged in professional or technical engineering or scientific activities; and
2. Employees whose basic compensation exceeds the minimum rate for grade GS-10 of the Classification Act of 1949, as amended.

By regulation (section 550.111(e)) we have provided that when an employee's basic workweek includes a daily tour of duty of more than 8 hours and his hourly rate of basic compensation is greater than the hourly rate of overtime compensation, he will be paid at his basic rate of compensation for each hour of his daily tour within his basic workweek that exceeds 8 hours. For example, an employee in rate 3 of grade GS-13 with an annual salary rate of \$13,769 has a basic workweek of four 10-hour days. His straight-time hourly rate is \$6.62 and his overtime hourly rate is \$6.08. To pay him at the overtime hourly rate for 2 hours each day would result in a lower rate of pay than his basic pay; thus, we provide that he will be paid at the \$6.62 rate for the hours in excess of 8 each day that are within his basic workweek.

Maximum Overtime Rate

The maximum rate of overtime pay is now rate 1 of grade GS-10 of the Classification Act, as amended. Currently this is \$6.08 per hour. The revised regulations reflect this change. The regulations also reflect the fact that rate 1 of GS-10 is now the maximum rate on which additional annual compensation rates are computed.

Premium Pay for Sunday Work

A new provision for premium pay has been added to the Federal Employees Pay Act of 1945, as amended: premium pay for Sunday work. Under this provision an employee is entitled to this premium pay when he performs work within his basic workweek during a regularly scheduled tour of duty any part of which is within the period beginning at midnight Saturday and ending at midnight Sunday. The premium pay amounts to 25 percent of his rate of basic compensation for each hour of work performed within that tour (but not in excess of 8 hours) which constitutes a part of his basic workweek. For example, an employee has a basic workweek consisting of four 10-hour days. This tour of duty begins at 8 p.m. each day on Sunday, Monday, Tuesday, and Wednesday:

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1. If he works the full 10 hour tour of duty beginning on Sunday, he is entitled to premium pay at the rate of 25 percent of his basic compensation for 8 hours.
2. If he is on paid leave for the entire day, he is not entitled to the premium pay for Sunday work since he performed no work.
3. If he is on paid leave from 8 p.m. to midnight and works from midnight to 6:30 a.m. (the remainder of his tour), he is not entitled to premium pay for Sunday work since he performed no work on Sunday.
4. If he is on leave from 8 p.m. to 11 p.m. and works the remainder of his tour, he is entitled to premium pay at the rate of 25 percent of his rate of basic compensation for 7 hours (since he did perform work on a Sunday).

On the other hand, if an employee has a six hour tour of duty within his basic workweek and any part of that tour of duty is worked on a Sunday, he is entitled to premium pay at the rate of 25 percent of his basic compensation for the full six hour tour. Absences on leave will be treated in a manner similar to the example set out above.

When an employee has two separate tours of duty on Sunday (such as, a tour of duty that begins on Saturday and ends on Sunday and another tour of duty that begins on Sunday and concludes on Monday), he is entitled to premium pay for Sunday work for not to exceed 8 hours for each tour of duty in accordance with the pertinent regulations and instructions.

Other Changes

The other changes in the regulations reflect the new requirement for considering Sunday work in establishing additional annual rates of basic compensation under section 401 of the Federal Employees Pay Act of 1945, as amended. Similarly, Sunday work is included in computing an employee's existing aggregate compensation under section 550.164 of part 550.

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Subpart A. Premium Pay

(New material underscored)

Section 550.103 Definitions. In this subpart:

(i) Overtime work has the meaning given that term by paragraphs (a) and (d) of section 550.111 /section 550.111(a)/, and includes irregular or occasional overtime work and regular overtime work.

(j) Premium pay means additional compensation authorized by the act and this subpart for overtime, night, holiday, or Sunday work, and standby duty.

(p) Sunday work means all work during a regularly scheduled tour of duty within a basic workweek when any part of that work is performed on Sunday.

Section 550.111 Authorization of overtime pay (a) Except as provided by paragraph (d) of this section, overtime work means each hour of work in excess of 40 hours in an administrative workweek or in excess of 8 hours in a day, whichever is the greater number of overtime hours, that is

(1) Officially ordered or approved; and

(2) Performed by an employee.

(d) For an employee for whom the first 40 hours of duty in an administrative workweek is his basic workweek under section 610.111(b) of Part 610 of this chapter, overtime work means each hour of work in excess of 40 hours in an administrative workweek that is

(1) Officially ordered or approved, and

(2) Performed by an employee

when the employee's basic compensation exceeds the minimum rate of grade GS-10 of the Classification Act of 1949, as amended, or when the employee is engaged in professional or technical engineering or scientific activities. For purposes of this section and section 201 of the Act an employee is engaged in professional or technical engineering or scientific activities when he is assigned to perform the duties of a professional or support technician position in the physical, mathematical, natural, medical, or social sciences or engineering or architecture.

(e) Notwithstanding paragraphs (a) and (d) of this section, when an employee's basic workweek includes a daily tour of duty of more than 8 hours and his hourly rate of basic compensation exceeds the hourly rate of overtime compensation provided by section 550.113, the department shall pay him at his basic rate of compensation for each hour of his daily tour of duty within his basic workweek.

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Section 550.113 Computation of overtime pay. (a) For each officer or employee whose rate of basic compensation does not exceed the minimum rate of grade GS-10 /GS-9/ of the Classification Act of 1949, as amended, the overtime hourly rate is one and one-half times his hourly rate of basic compensation.

(b) For each officer or employee whose rate of basic compensation exceeds the minimum rate of GS-10 /GS-9/ of the Classification Act of 1949, as amended, the overtime hourly rate is one and one-half times the hourly rate of basic compensation at the minimum rate of grade GS-10 /GS-9/.

Section 550.114 Compensatory time off for irregular or occasional overtime work.

(b) The head of a department may provide that an employee whose rate of basic compensation exceeds the maximum rate of grade GS-10 /GS-9/ of the Classification Act of 1949, as amended, shall be compensated for irregular or occasional overtime work with an equivalent amount of compensatory time off from his tour of duty instead of payment under section 550.113.

Section 550.132 Relation to overtime, night, and Sunday pay. (a) Premium pay for holiday work is in addition to overtime compensation or night pay differential, or premium pay for Sunday work payable under this subpart and is not included in the rate of basic compensation used to compute the overtime compensation or night pay differential or premium pay for Sunday work.

Section 550.141 Authorization of premium pay on an annual basis. An agency may pay premium pay on an annual basis, instead of the premium pay prescribed in this subpart for regularly scheduled overtime, night, holiday, and Sunday work, to an employee in a position requiring him regularly to remain at, or within the confines of, his station during longer than ordinary periods of duty, a substantial part of which consists of remaining in a standby status rather than performing work. Premium pay under this section is determined as an appropriate percentage, not in excess of 25 percent, of that /such/ part of the employee's rate of basic compensation for grade GS-10 /GS-9/ of the Classification Act of 1949, as amended.

Section 550.144 Rates of premium pay payable under section 550.141. (a) An agency may pay the premium pay on an annual basis referred to in section 550.141, to an employee who meets the requirements of that section, at one of the following percentages of that /such/ part of the employee's rate of basic compensation which /as/ does not exceed the minimum rate of basic compensation for grade GS-10 /GS-9/ of the Classification Act of 1949, as amended:

(b) If an employee is eligible for premium pay on an annual basis under section 550.141, but none of the percentages in paragraph (a) of this section is applicable, or unusual conditions are present which seem to make the applicable rate unsuitable, the agency may propose a rate of premium pay on an annual basis for the Commission's approval. The proposal shall include full information bearing on the employee's tour of duty; the number of hours of actual work required; and how it is distributed over the tour of duty; the number of hours in a standby status required and the extent to which the

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employee's whereabouts and activities are restricted during standby periods; the extent to which the assignment is made more onerous by night, holiday, or Sunday duty or by hours of duty beyond 8 in a day or 40 in a week; and any other pertinent conditions.

Section 550.151. Authorization of premium pay on an annual basis. An agency may pay premium pay on an annual basis, instead of other premium pay prescribed in this subpart ~~except premium pay for regular overtime work~~, to an employee in a position to which the hours of duty cannot be controlled administratively, and which requires substantial amounts of irregular or occasional overtime work and work at night, and Sundays, and on holidays with the employee generally being responsible for recognizing, without supervision, circumstances which require him to remain on duty. Premium pay under this section is determined as an appropriate percentage, not in excess of 15 percent, of that /such/ part of the employees' rate of basic compensation which /as/ does not exceed the minimum rate of basic compensation for grade GS-10 /GS-9/ of the Classification Act of 1949, as amended.

Section 550.153. Bases for determining positions for which premium pay of 15 percent under section 550.151 is authorized.

(b) In order to satisfactorily discharge the duties of a position referred to in section 550.151, an employee is required to perform substantial amounts of irregular or occasional overtime work and work at night, on Sundays, and on holidays. In regard to this requirement:

(3) There must be a definite basis for anticipating that the irregular or occasional overtime work will continue over an appropriate period with a duration and frequency sufficient to meet the minimum requirements under subparagraphs (1) and (2) of this paragraph, and that night, Sunday, and holiday work will be performed from time to time.

Section 550.154. Rates of premium pay payable under section 550.151. (a) An agency may pay the premium pay on an annual basis referred to in section 550.151 to an employee who meets the requirements of that section, at the rate of 15 percent of that /such/ part of the employee's rate of basic compensation which /as/ does not exceed the minimum rate of basic compensation for grade GS-10 /GS-9/ of the Classification Act of 1949, as amended.

(b) If an agency proposes to pay an employee premium pay on an annual basis under section 550.151 but unusual conditions seem to make the applicable rate in paragraph (a) of this section unsuitable, the agency may propose a lesser rate of premium pay on an annual basis for the Commission's approval. The proposal shall include full information bearing on the frequency and duration of the irregular or occasional overtime work and the night, holiday, and Sunday work required; the nature of the work which prevents hours of duty from being controlled administratively; the necessity for the employee's being generally responsible for recognizing, without supervision, circumstances which require him to remain on duty; and any other pertinent conditions.

Section 550.162. Payment provisions.

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(d) When an employee is not entitled to premium pay on an annual basis under section 550.141 or section 550.151, he is entitled to be paid for overtime, night, holiday, and Sunday work in accordance with the other sections of this subpart.

Section 550.163 Relationship to other payments. (a) An employee receiving premium pay on an annual basis under section 550.141 may not receive premium pay for regular overtime work or work at night or on a holiday or on Sunday under any other section of this subpart. An agency shall pay the employee in accordance with sections 550.113 and 550.114 for irregular or occasional overtime work in excess of his weekly tour of duty.

(b) An employee receiving premium pay on an annual basis under section 550.151 may not receive premium pay for irregular or occasional overtime work or work at night or on a holiday or on Sunday under any other section of this subpart. An agency shall pay the employee in accordance with other sections of this subpart for regular overtime work.

(c) Overtime, night, holiday, or Sunday work compensated under any statute other than the act is not a basis for payment of premium pay on an annual basis under section 550.141 or section 550.151.

Section 550.164 Construction and computation of existing aggregate rates.

(b) When it is necessary to determine an employee's existing aggregate rate of compensation (referred to in this section as existing aggregate rate), an agency shall determine it on the basis of the earnings the employee would have received over an appropriate period (generally 1 year) if his tour of duty immediately before the date section 401 of the act is made applicable to him had remained the same. In making this determination, basic compensation and premium pay for overtime, night, holiday, and Sunday work are included in the earnings the employee would have received. Premium pay for irregular or occasional overtime work may be included only if it was of a significant amount in the past and the conditions which required it are expected to continue.

Pay for Sunday Work

Section 550.171. Authorization of pay for Sunday work. An employee is entitled to compensation at his rate of basic compensation plus premium pay at a rate equal to 25 percent of his rate of basic compensation for each hour of Sunday work not in excess of eight hours.

Section 550.172. Relation to overtime, night, and holiday pay. Premium pay for Sunday work is in addition to premium pay for holiday work, overtime compensation, or night pay differential payable under this subpart and is not included in the rate of basic compensation used to compute the pay for holiday work, overtime compensation, or night pay differential.